

SECTION 400.00 AGREEMENT PREPARATION

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SECTION 400.00 – AGREEMENT PREPARATION

SECTION 410.00 – NEGOTIATION OF THE CONTRACT

The department's objective is to receive quality work at a price that is fair to both parties, **NOT** to receive professional services at the cheapest price possible. Therefore, the services to be performed should be based on realistic estimates of future requirements and activities.

410.01 Scope of Work. The first step in negotiations is for the consultant to provide a well-defined written scope of work. The level of detail should be adequate so that later the services that were required can be determined, particularly as to identifying what qualifies as additional services. The scope of work should be revised as necessary until the department and the consultant agree to the services to be provided. The scope of work will become an attachment and will be the main basis of the agreement.

410.02 Man-Day Estimate. After the scope of work is completed, the consultant shall provide a blank man-day estimate form. This form should reflect the consultant's actual staffing and the scope of work. Utilizing the consultant's format, both the consultant and the department will estimate the man-day effort required to complete the scope of work. The District or Section that would normally perform the work should complete the department's estimate.

The estimates should be completed independently, signed, and dated. The consultant's completed man-day estimate and the department's estimate should be delivered directly to the Consultant Administration Unit (CAU) one week in advance of negotiations. For agreements with an estimated cost of less than \$50,000, an independent estimate is not required. Negotiations should still be done to achieve the desired scope of work and cost.

The CAU will distribute the consultant's completed man-day estimate to the appropriate Sections/Districts. The man-day estimates of the consultant and the department should be exchanged and thoroughly reviewed, discussed, and negotiated. The initial estimates often vary considerably. There is a tendency for the consultant estimates to be on the high side because the consultant's ability to perform the work is on the line. The firm wants to be paid for all work performed, and may be concerned about being required to do additional work. The department's estimate tends to be on the low side due to optimistic expectations and exclusion of items that are necessary to complete the work. A final man-day estimate shall be negotiated, signed, and dated.

410.03 Overtime. All professional services agreements are negotiated prior to awarding the project, with specific time constraints for completion of work as well as compensation to consultants for the actual billable work hours within the time frame agreed. That agreement between the Department and the consultant firm shall be that the project can be completed within the negotiated time frame and budget. It is the responsibility of the consultant to schedule and manage their overall workload, staff and working time.

It is the policy of the Department to pay overtime only when the Department requests the project be accelerated and/or expedited, and the overtime has been negotiated in advance. Overhead and fee will not be paid on the premium portion of overtime.

410.04 Labor Caps. The maximum for direct hourly labor is forty-five dollars (\$45). The rates must also meet the test of being fair and reasonable.

Labor caps can be exceeded when approval is granted by the Assistant Chief Engineer - Development.

410.05 Cost of Living Increases. All professional agreements are negotiated between the Department and the selected consultant for a reasonable and fair price based on current approved company costs.

For projects expected to last more than two years, possible salary increases could occur and some allowances should be provided in the agreement to include a contingency amount. These increases shall be based on the consumer price index according to the Dept. of Labor, Bureau of Statistics. Cost of Living increases will be applied to the remainder of the work under the Agreement. The formula for this is $(\text{Raw Labor Cost})(\% \text{ Allowable Escalation})(\% \text{ Duration})(1 + \text{Overhead}) = \text{Allowed Escalation}$.

Because salary increases are estimated and do not reflect the actual current cost, they are not supportable for the pre-award audit, and it is not guaranteed that the increases will happen in the amount or in the time expected. Therefore, the department will not apply fixed fee to the cost of living increase.

410.06 Travel and Per Diem Expenses. All travel and per diem expenses shall be paid in accordance with the Federal Travel Regulations and ITD policies.

Reimbursement for meals and lodging should follow the firm's policy. However, the amount allowed for reimbursement shall not exceed the Federal Per Diem rates for Idaho. The Federal Per Diem rates referred to in the professional agreements include seasonal rates that are allowed for Idaho. These rates should be applied for all work and according to the periods indicated.

Because of the geographical makeup of the state of Idaho, where the use of bordering areas to conduct department business is often necessary, the in-state travel definition shall include those areas that border the state up to 60 highway miles. These border destinations shall be classified the same as any in-state destination, and subsistence and other travel expenses shall be reimbursed using standard in-state travel policies and rates.

Consultants are eligible for meal and lodging expense reimbursement when assignments are beyond 65 miles of official station of duty as defined by the Idaho Transportation Department, and personnel are in travel status for more than 12 hours.

All claims for travel expenses are made on a reimbursable basis. The Consultant can claim actual expenses up to the allowable limits for meals and incidentals. Actual expenditure of the amount claimed must be made before requesting reimbursement.

410.07 Automobile Travel. When privately-owned automobiles are authorized or approved for transportation, distances between points traveled shall be as shown in standard highway mileage guides. (Actual odometer readings need not be shown on the invoice, but the firm should have a system or method for tracking the mileage.) Any substantial deviations from distances shown in the standard highway mileage guides shall be explained. The mileage may be claimed from whatever point the employee or other person rendering service begins his/her journey. The mileage reimbursement rate covers all cost of vehicle operation including insurance, repairs, gasoline, maintenance, etc.

410.08 Other Direct Costs. All costs must meet the test of being fair and reasonable.

Some cost elements such as computers, vehicles, mylars, and other costs can be recovered, at the consultant's option, in overhead or as direct expenses. The treatment of these cost elements must be consistent and no double charging will be allowed. Usually costs that are unique to a project such as a crew's hotel charges, mileage, and meals for out of town work are separated out as direct expenses. Some of these out of pocket expenses are capped as per current approved federal and state policies.

Sometimes a cost type can be both an overhead expense and a direct expense. For instance, the room and board charges for the crew are a direct expense, while the room and board charges for a corporate meeting are an overhead expense.

Sub-consultant costs are usually classified as direct expenses, however all cost accounting criteria that are applied to the prime consultants shall also apply to sub-consultants.

Eligibility of cost on federally-assisted agreements is governed by [48 CFR 31](#) (Federal Acquisition Regulations).

410.09 Summary Cost Estimate. All costs shall be itemized on a “Summary Cost Estimate” sheet with separate categories for Man-Day Costs, Fringe and Overhead, Net Fee, Out-Of-Pocket Expenses and a summary amount for each Sub-Consultant. (See [Section 1000](#), Sample.)

The raw labor estimate is derived from negotiated man-hours multiplied by certified hourly rates identified by job classification for the staff assigned to the proposed project. The labor estimate is then multiplied by the overhead rate. Combining the raw labor computation and the overhead rate computation results in the loaded cost of labor.

The amount of fixed fee for the Consultant is negotiable and is added to the consultant’s cost estimate as a separate line item.

Out-of-Pocket Expenses, that are not included within the company’s Overhead rate, shall be itemized to reveal quantities, unit costs and a cost summary for each item. Out-of-pocket expenses are listed at actual cost and added to the cost estimate without mark-up for profit.

Costs for each sub-consultant should be listed with the sum of their costs added to the estimate of the prime consultant. Each sub-consultant should provide a separate itemized cost estimate using the same format as described above for the prime consultant.

410.10 Ratio of Consultant Costs to Construction Costs. Once the estimates are reconciled, one final step must be performed. The ratio of consultant cost to construction cost must be reviewed. The overall average for consulting services is ten percent (10%) of the project development services. The percentage may vary due to size and complexity of the project.

The smaller the project, the higher the percentage may run usually around fifteen percent (15%). The larger the project, the lower the percentage - usually around nine percent (9%). The cost for urban and some bridge projects can be expected to be higher than rural projects.

When the percentage is low, both parties should carefully review the services to be provided to check that everything is reasonably covered. When the percentage is high, the consultant should be directed to review the scope of work, the effort required, and possible ways to be more efficient, and provide a best and final estimate

420.00 – BASIS OF PAYMENT

After the man-day estimate is finalized and the cost elements are applied to arrive at an agreement amount, a basis of payment should be established. The basis of payment may be either “*cost*,” “*cost plus fixed fee*,” or “*lump sum*.” Regardless of the basis of payment, the man-day estimate and the cost elements remain the same. A discussion of each basis of payment method follows:

420.01 Cost. “Cost” is the sum of the hourly charge out rate for overhead and other direct costs. Some small firms do not have an approved overhead rate that has been developed in accordance with the cost principles of the Federal Acquisition Regulations (FARs). These companies use a loaded hourly rate that includes all overhead and fees for time worked directly on the project.

When the agreement or sub-consultant agreement is under \$50,000 the requirement for an acceptable FARs accounting system may be waived. In the absence of an audited overhead rate, fair and reasonable rates should be negotiated. These rates become the hourly charge out rate and the basis of payment then would be “cost.” The agreement with the prime consultant usually is on a “*cost plus fixed fee*” basis of payment with one or more sub consultants on a “cost” basis of payment.

A “*not-to-exceed*” dollar amount shall be established during negotiation and included in the agreement whenever “cost” payments are used.

420.02 Cost Plus Fixed Fee. “Cost plus fixed fee” is the sum of the payroll costs, combined overhead, other direct costs, plus a fixed fee. This basis of payment is utilized when the scope of work is definitive. The consultant assumes a greater risk and is required to complete a specific scope of work within a set dollar amount. The risk is directly tied to the written scope of work and man-day estimate. The elements of the project under the consultant’s contract must be completed at a not-to-exceed amount.

If additional work by the consultant becomes necessary, official notification to the department is required. If the CAM and the Agreement Administrator determine that the Consultant needs to perform additional work, an appropriate payment would then be negotiated.

420.03 Fixed Fee. The “fixed fee” is a dollar amount negotiated to cover the Consultant's profit and business expenses not allocated to overhead costs. The determination of “fixed fees” shall take into account the size, complexity, duration, and degree of risk involved in the work and does not vary as direct labor costs vary. Federal Acquisition Regulation disallows certain aspects of normal business expenses from being recaptured in overhead, so the only way to recapture these expenses is in the “fixed fee.”

The establishment of the fixed fee shall be project specific. Fixed fees shall not exceed 15 percent of the total direct labor and indirect cost for preliminary engineering. Subject to approval, a “fee” rate of over 15 percent may be justified when exceptional circumstances exist. No more than 10% fee shall be used for CE & I contracts.

420.04 Lump Sum. “Lump sum” is an agreed upon total amount for all work described in the agreement. Calculation is based on the sum of the payroll costs, combined overhead, direct costs, and a fee.

As with the “*cost plus fixed fee*” basis of payment, the consultant assumes greater risk and is required to complete a specific scope of work for a “*lump sum*” (set dollar amount).

420.05 Not-to-Exceed. A “not-to-exceed” dollar amount should be established during the negotiation and included in the agreement.

420.06 Additional Services. Additional services is a dollar amount that is included in the agreement for additional work that is identifiable, but cannot be accurately determined at the time the agreement is signed. It is for work beyond the scope of work already authorized by the department.

If additional services money is utilized, it must be negotiated and authorized by issuance of a PSA (Professional Services Authorization).

SECTION 430.00 – AGREEMENT TECHNICALITIES

430.01 Agreement Preparation. The sample Professional Service Agreement should be used as a guide by the CAU in preparing the agreement. (See Sample Agreement at:

<http://www.itd.idaho.gov/design/cau/forms.htm>.

Each section of the agreement should be reviewed and edited as appropriate for the specific agreement being negotiated.

Individual Subconsultants and their portion of the work and the duties and responsibilities of the department should be listed.

The description of work should include the following documents as attachments:

- the negotiated scope of work,
- man-day (man-hour) estimate,
- cost proposal of consultant services including employee utilization,
- itemized breakdown of direct cost, and
- project schedule and milestones or completion date.

Contract time will be designated in either calendar days or a completion date. If the services are for full project design, then the agreement should have provisions to keep the consultant on call during the construction phase of the project to provide designer-related services.

If the contracted services are other than full project design, the department often has a need for the consultant to provide additional input after the main body of work has been completed. Therefore a clause should be added to keep the agreement open for an additional period of time (usually 60 to 180 days) or until the agreement is closed out, whichever comes first.

The basis of payment and the agreement amount shall be listed along with the fee and combined overhead rates for the consultant and each sub consultant.

430.02 Pre-award Audit Assurance. When the total agreement amount, including supplementals, exceeds \$200,000 for State projects and \$100,000 for locally sponsored projects, a Pre-Award Audit Assurance is required. CAU will send a copy of each agreement exceeding these amounts to Internal Review for a Pre-Award Audit.

The request for pre-award audit assurance should be made when the agreement has been negotiated and written. The Pre-award Audit Assurance must be performed by Internal Review prior to execution of the agreement.

The consultant should have an acceptable cost accounting system that meets the requirements of the FARs. The consultant's overhead rates can be developed by the audit in accordance with the "Overhead Guidelines for Consultants."

The Consultant Administration Unit can provide copies of these guidelines whenever requested. ITD can also accept audits performed by other government agencies. In the absence of a current existing audit, the consultant may have an audit performed by an independent Certified Public Accountant. The cost elements of the agreement must be supported.

430.03 Legal Review and Approval. The Legal section must approve all negotiated contracts or agreements, except for right of way agreements and standard formatted agreements that have been previously approved by the Legal section.

Standard department contracts that have been approved “as to form” need not be re-submitted, unless the standard contract is revised.

If the contract or agreement is not approved by the Legal section, the Director will resolve any differences.

430.04 Agreement Funding. The CAU verifies that funding is available for the consultant services and the authority to use the funding has been completed. This funding process starts with approval of the [ITD-2760](#), Request for Consultant Services. At times, the District or Section may need to submit an [ITD-1414](#), Project Program Entry or Revisions, to Highway Programming and an [ITD-2101](#), Project Approval Request to Roadway Design to allocate the necessary funding for consultant services. The Notice to Proceed will not be issued until the necessary funds are obligated as evidenced by an approved [ITD-2101](#). (See [Section 900](#), Forms, for the above-mentioned forms.)

On Full Oversight Projects, the agreement must be approved by FHWA prior to the “[2101](#)” funds being authorized.

Negotiation Meeting Agenda

- Introductions (sign-in sheet) (Typical attendees: Project Manager PDE, Technical Experts, Prime Consultant, Sub consultants, CAU, local official (if local project), FHWA (if full oversight))
- Define Project Title information to be used on all correspondence:

Project Location _____

Project Number _____

Key No. _____ Work Authority: _____

- Agreement Administrator _____
- Prime Consultant _____
 - Subconsultant _____ Task _____
 - Subconsultant _____ Task _____
 - Subconsultant _____ Task _____

- Agreement Type: _____
(i.e. Work Task, Professional Agreement)
- Basis of Payment: _____
(i.e. Cost Plus Fixed Fee; Lump Sum)
- Overhead Costs (Current Audit?)
- Federal-aid Per Diem Rates: Lodging, Meals, Mileage
- Project Milestones & CPM Schedule
- Scope of Work
- Resource time comparison (i.e.: Man-days per task)
- Direct Expenses (not included in overhead)
- Additional Services
- Fee Percentage _____% (Discuss reason for % as in risk/complexity/history)
- Potential Supplemental (not for Work Task Agreements)
- Construction Services (obligatory and paid)
- Errors & Omissions (discuss responsibility and process)
- Not-to-Exceed Amount \$ _____
- PSA #1 \$ _____ (discuss PSA distribution, task start approval & deliverables)
- Scheduled construction costs \$ _____ (discuss E&C%, R/W, UTIL, TS, SF, & other costs that will utilize project funds.)
- Current Funding
- Notice-to-proceed proposed date _____